IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Poh C. Chua et al.

Application No.: 10/725,579	Confirmation No.: 3455
Filed: December 3, 2003	Art Unit: 2617
For: SYSTEM AND METHOD FOR ENABLING SAFE HANDS-FREE OPERATION OF A WIRELESS TELEPHONE IN A VEHICLE	Examiner: Jean Alland Gelin

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This brief is filed in furtherance of a Notice of Appeal filed concurrently herewith and in response to a non-final Office Action, withdrawing the finality of the previous final Office Action, mailed on July 9, 2009. Applicants believe that no fees are required in conjunction with this submission. However, should any further fees be due, including if such paper(s) be inadvertently omitted, Applicants authorize such fees to be charged to Deposit Account No. 22-0185, under Order No. 27592-00107-US2, from which the undersigned is authorized to draw.

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This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206, which begin on the pages as indicated:

I.　　REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Poledo Holdings LLC.

II.　　RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III.　　STATUS OF CLAIMS

A.　　Total Number of Claims in Application

There are 24 claims pending in this application.

B.　　Current Status of Claims

1.　　Claims canceled: 1-43, 46, 47, 53, 54, 59-62

2.　　Claims withdrawn from consideration but not canceled: None

3.　　Claims pending: 44, 45, 48-52, 55-58, 63-75

4.　　Claims allowed: None

5.　　Claims rejected: 44, 45, 48-52, 55-58, 63-75

C.　　Claims On Appeal

The claims on appeal are Claims 44, 45, 48-52, 55-58, and 63-75.

IV.   STATUS OF AMENDMENTS

Applicants did not file an Amendment After Final Rejection in response to the final Office Action mailed on June 17, 2008 and have not filed any amendment in response to the Office Action mailed on July 9, 2009; all previous amendments have been entered.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

Briefly, various embodiments of the invention may relate to methods and systems addressing the operation of a wireless device in a vehicle, for example, for safety reasons. For example, this may occur by automatically enabling hands-free operation of the wireless device in response to detecting that the wireless device is located in the vehicle.

The application includes four independent claims. Independent Claims 44 and 51 are directed to methods, independent Claim 56 is directed to a system, and independent Claim 64 is directed to a storage medium containing processor-executable instructions.

Claim 44 is directed to a method for operating wireless devices in vehicles. A relationship between the wireless device and the vehicle is monitored based on geographical location information of the wireless device and of the vehicle. If a condition relating to this relationship, for example, a predetermined proximity, is met, then hands-free mode operation of the wireless device is enabled. An exemplary embodiment that includes these elements may be found, e.g., in Fig. 3 and in the specification at paragraphs 49-60. To explain this embodiment and its relationship to the claim elements, block 306 of Fig. 3 is labeled "Receive Information," and as explained at paragraph 54, this may refer to receiving location information from one or more location systems, and this location information may represent the locations of the wireless device and the vehicle. Then, in block 308 of Fig. 3, as described at paragraph 308, a microprocessor may be used to monitor whether this location information satisfies a previously-determined rule (paragraphs 50-52 address the input of rules and some exemplary rules). If a rule is met, for example, if an unsafe condition is detected (block 310), then the method may employ one or more measures, which may include a switch to hands-free mode (block 318; paragraph 60).

Claim 51 is directed to a method for using a wireless telephone in a vehicle. The method includes determining whether the wireless telephone is within the vehicle; this is done by finding and comparing geographical locations of the wireless telephone and the vehicle. Hands-free operation is enabled if it is found that the wireless telephone is within the vehicle. An exemplary embodiment that includes these elements may be found, e.g., in Fig. 3 and in the specification at paragraphs 49-60. To explain this embodiment and its relationship to the claim elements, block 306 of Fig. 3 is labeled "Receive Information," and as explained at paragraph 54, this may refer to receiving location information from one or more location systems, and this location information may represent the locations of the wireless device (which may be a wireless telephone) and the vehicle. Then, in block 308 of Fig. 3, as described at paragraph 308, a microprocessor may be used to monitor whether this location information satisfies a previously-determined rule (paragraphs 50-52 address the input of rules and some exemplary rules). If a rule is met, for example, if an unsafe condition is detected (block 310), then the method may employ one or more measures, which may include a switch to hands-free mode (block 318; paragraph 60).

Claim 56 is directed to a system for operating wireless devices in vehicles. The first element of the claim is means for determining a positional relationship between a wireless device and a vehicle, based on comparing respective position data. As noted, for example, in paragraphs 54-55, a microprocessor 126 may be used to receive location information (corresponding to positional data) for a wireless telephone 110 and a vehicle 120, and it processes this information to determine if a condition is met. Examples of such conditions are discussed at paragraphs 50-52, and it is implicit in such rules that the microprocessor 126 will determine a positional relationship between the wireless telephone 110 and the vehicle 120 by processing (comparing) the location information of the wireless telephone 110 and the vehicle 120.

The next element of Claim 56 is means for defining a condition based on the positional relationship for enabling a hands-free mode. As discussed, e.g., in paragraph 53, the rules that determine when hands-free mode may be enabled (see, e.g., paragraphs 50-52) may be input by the manufacturer, a network representative, the user, or another entity, and they may be stored in a memory 127. Note that, in other embodiments, such rules may be stored in other memories

(e.g., memories 117, 127, and/or 137 of Fig. 1, as discussed, e.g., at paragraph 31). As noted above, the microprocessor may then determine if a condition defined by the rules is met.

Finally, the last element of Claim 56 is means for enabling the wireless device to operate in the hands-free mode where the positional relationship of the device being in the vehicle is satisfied. As discussed, e.g., at paragraphs 58-60, if the microprocessor 126 determines that a condition has been met, as discussed above, the microprocessor 126 may initiate various functions to ensure that hands-free mode is enabled. For example, the microprocessor may cause the user to be notified to unite mating units 119 and 129 (of the wireless device and the vehicle, respectively). If the user fails to comply, the microprocessor 126 may cause the vehicle to be disabled (see, e.g., Fig. 3, block 322).

The last independent claim is Claim 64, which is directed to a storage medium containing processor-executable instructions that may cause a processor to execute a method similar to that found in Claim 51; the reader is directed to the discussion of Claim 51 above for further explanation of the steps. Such a storage medium may be found, e.g., in Figs. 1, 4, and 7 (e.g., memory 117), and numerous portions of the specification (e.g., paragraph 30) refer to a (micro)processor being adapted to execute various types of actions.

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 44, 45, 48-52, 55-58, 63-70, and 74 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Phillips (U.S. Patent Application Publication No. 2003/0055560) in view of Yamamoto (U.S. Patent Application Publication No. 2002/0142803).

Claims 71-73 and 75 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Phillips (U.S. Patent Application Publication No. 2003/0055560) in view of Yamamoto (U.S. Patent Application Publication No. 2002/0142803), and further in view of Parvulescu et al. (U.S. Patent No. 6,687,497).

VII.   ARGUMENTS

A. NO *PRIMA FACIE* CASE IS PRESENTED FOR THE REJECTION OF CLAIM 64

As an initial note, at page 2 of the Office Action (all references in this section to "the Office Action" refer to the Office Action mailed on July 9, 2009), Claim 64 is listed in the list of rejected claims, but it is never addressed in the body of the rejection. Therefore, there is no *prima facie* case for this rejection, and Claim 64 is presumed to be allowable, independent of the allowability of any other claim(s).

B. CLAIMS 44, 45, 48-52, 55-58, AND 63-75 ARE ALLOWABLE OVER THE CITED REFERENCES BECAUSE THE CITED REFERENCES FAIL TO ADDRESS ALL RECITED CLAIM ELEMENTS AND BECAUSE THE CITED REFERENCES WOULD NOT HAVE BEEN CONSIDERED FOR COMBINATION BY A SKILLED PRACTITIONER

A set of arguments pertaining to all pending claims will now be presented. In particular, at page 2, the Office Action cites Phillips as disclosing "monitoring a relationship between a wireless device and a vehicle by evaluating location information that specifies a location of the wireless device, that specifies a location of the vehicle, wherein the geographical location information is generated for each . . . by at least one location system, to determine the relationship by comparing the location of the wireless device to the location of the vehicle." The Office Action cites Phillips at paragraphs [0008]-[0011] in support of this assertion. It is noted that Phillips is directed to a system for vehicle location that makes use of a wireless device to receive location information for the vehicle and that the wireless device determines its own location and compares the two to obtain information to display to the user, to assist the user in locating the vehicle (see, e.g., paragraphs [0008]-[0011]). However, as noted at page 3 of the Office Action, Phillips does not disclose enabling hands-free operation of the wireless device if the geographical relationship between the device and the vehicle satisfies a condition, as in

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Claim 44 (Claims 51, 56, and 64 recite, further, that the condition corresponds to the device being within the vehicle).

The Office Action, at page 3, cites Yamamoto to address the deficiencies of Phillips. In particular, the Office Action asserts that "Yamamoto teaches when the mobile telephone is in the vehicle[,] information can be transmitted in hands-free mode without making any operation [0048]." It is respectfully submitted that Yamamoto fails to fully address the deficiencies of Phillips.

In particular, Yamamoto does not disclose or suggest enabling a hands-free mode of operation when a condition is satisfied with respect to the geographical relationship between the wireless device and the vehicle, as claimed. Yamamoto, as presented, e.g., in Fig. 4, relies on a query-response type of operation to determine when a wireless device is in proximity to a base station located in the vehicle. *This does not correspond to a condition based on geographical locations of the device and the vehicle.* Therefore, even if, *arguendo*, Yamamoto's system is able to determine when a wireless device is able to establish a (Bluetooth) connection to a vehicle system, this is *not based on a condition based on geographical information – it is based on a successful "handshake" between the wireless device and the base station in the vehicle.* Consequently, the mere addition of Yamamoto to Phillips fails to result in the claimed invention.

Furthermore, it is not apparent that Yamamoto and Phillips could even be combined to obtain what has been claimed. Yamamoto is directed to a system for providing hands-free operation of a wireless communication device when used in a vehicle, where the system in the vehicle works to allow the wireless device to detect the presence of the system (see discussion above). Phillips is directed to a vehicle location system using a hand-held device. This leads to several issues. These are two disparate systems—communications and vehicle location—which

are not apparently combinable, so a skilled artisan would not have looked to one of these references to remedy the shortcomings of the other one of these references.

It is, therefore, respectfully submitted that all of the present claims are allowable over the cited references.

C. CLAIMS 65-73 ARE ALLOWABLE OVER THE CITED REFERENCES BECAUSE IF THE CITED REFERENCES ARE COMBINED AS SUGGESTED TO OBTAIN FURTHER ELEMENTS OF THESE CLAIMS, THE FUNCTIONALITY OF ONE OF THE REFERENCES WOULD BE DESTROYED

We now present arguments addressing further elements of Claims 65-73. Claims 65-73 include recitations that address the disabling of non-hands-free operation if the (geographical) positional relationship between the wireless device and the vehicle indicates that the wireless device is located within the vehicle. The Office Action, at page 4, maintains that Yamamoto teaches this limitation, noting paragraphs [0019] and [0048]. However, it is respectfully submitted that merely combining this feature of Yamamoto into the system of Phillips would likely at least partially destroy the functionality of the Phillips system. In particular, known geolocation systems are not currently capable of providing exact geographical locations; rather, they provide locations to within some tolerance. In the case where the geographical location information indicates that the wireless device is located within the vehicle, it may, in fact, not actually be within the vehicle. Therefore, the non-hands-free functionality of the device may be disabled prior to the user being able to locate the vehicle (that is, the device may be disabled based on the relative locations of the device and the vehicle, even though the user has not yet located the vehicle, which is the purpose of Phillips). Hence, the mere combination likely does not work, and further features, not obvious based on Phillips, Yamamoto, or their combination,

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are required (if such features are possible) to avoid this malfunction. Hence, it is respectfully submitted that Claims 65-73 are further allowable for this reason.

It is also noted that the discussion at pages 6-7 of the Office Action fails to address this argument.

D. CLAIM 48 IS FURTHER ALLOWABLE OVER THE CITED REFERENCES BECAUSE THE CITED REFERENCES FAIL TO TEACH OR SUGGEST A FURTHER CLAIM ELEMENT

A separate argument for the patentability of Claim 48 is now presented. Claim 48 recites "measuring a signal strength transmitted by the wireless device by a transceiver associated with the vehicle in addition to evaluating the geographical location information." The Office Action, at page 3, asserts that this is taught by Yamamoto, citing paragraphs [0048], [0058], and [0059]. However, the cited portions of Yamamoto merely deal with the detection of the proximity of the wireless device to the vehicle's device, which, as discussed above, is performed by a "handshaking" operation, not by means of a signal strength measurement. The Office Action, at page 7, further asserts that signal strength measurement is inherently performed; however, Applicants maintain that this is not so and that the handshake procedure of Yamamoto (see above) renders signal strength measurement (and, indeed, any kind of proximity detection) unnecessary and redundant. Furthermore, Applicants find no discussion of such signal strength measurements anywhere in Yamamoto. For this addition reason, it is respectfully submitted that Claim 48 is allowable over the cited references.

Applicants may not have presented all possible arguments or have refuted the characterizations of either the claims or the prior art as may be found in the Office Action. However, the lack of such arguments or refutations is not intended to act as a waiver of such arguments or as concurrence with such characterizations.

VIII.   CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

IX.   EVIDENCE

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

X.   RELATED PROCEEDINGS

No related proceedings are referenced in II. above, so no Appendix is included.

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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 10/725,579:

44.　　A method for operating wireless devices in vehicles, the method comprising:

monitoring a relationship between a wireless device and a vehicle by evaluating geographical location information that specifies a geographical location of the wireless device and that specifies a geographical location of the vehicle, wherein the geographical location information is generated for each of the wireless device and the vehicle by at least one location system, to determine the relationship by comparing the geographical location of the wireless device to the geographical location of the vehicle; and

enabling operation of the wireless device in a hands-free mode if the relationship satisfies a condition.

45.　　The method of claim 44, wherein the relationship indicates that the wireless device is located within the vehicle.

48.　　The method of claim 44, further comprising measuring a signal strength transmitted by the wireless device by a transceiver associated with the vehicle in addition to evaluating the geographical location information.

49.　　The method of claim 44, wherein the wireless device is a wireless telephone.

50.   The method of claim 44, wherein the enabling operation of the wireless device in a

hands-free mode is performed by the wireless device.

51.   A method for using a wireless telephone in a vehicle, the method comprising:

        determining presence of the wireless telephone within the vehicle by finding a geographic

location of the wireless telephone, finding a geographic location of the vehicle, and comparing

the geographic location of the wireless telephone to the geographic location of the vehicle; and

        enabling a hands-free mode of the wireless telephone if the wireless telephone is present

within the vehicle.

52.   The method of claim 51, wherein the determining is performed by a geonavigational

positioning system.

55.   The method of claim 51, wherein the enabling is performed by a microprocessor that

controls the wireless telephone.

56.   A system for operating wireless devices in vehicles, the system comprising:

        means for determining a positional relationship between a wireless device and a vehicle

by generating position data for the wireless device and generating position data for the vehicle

and by comparing the position data for the wireless device to the position data of the vehicle;

        means for defining a condition based on the positional relationship for enabling a hands-

free mode; and

means for enabling the wireless device to operate in the hands-free mode where the positional relationship of the wireless device being in the vehicle is satisfied.

57.　　The system of claim 56, wherein the determining means comprises a wireless communication network location system.

58.　　The system of claim 56, wherein the determining means comprises a GPS receiver in the wireless device and a GPS receiver in the vehicle.

63.　　The system of claim 56, wherein the wireless device is a wireless telephone.

64.　　A storage medium containing processor-executable instructions that, when executed by a processor, cause the processor to perform a method comprising:

comparing geographical location information obtained for a mobile device and geographical location information obtained for a vehicle to determine a positional relationship between the mobile device and the vehicle; and

enabling a hands-free mode of operation of the mobile device if the positional relationship indicates that the mobile device is located within the vehicle.

65.　　The medium according to claim 64, wherein the method further comprises:

disabling non-hands-free operation of the mobile device if the positional relationship indicates that the mobile device is located within the vehicle.

66.   The medium according to claim 65, wherein said disabling non-hands-free operation is limited to a particular region relative to the vehicle.

67.   The method according to claim 44, further comprising:

disabling non-hands-free operation of the wireless device if the positional relationship indicates that the wireless device is located within the vehicle.

68.   The method according to claim 67, wherein said disabling non-hands-free operation is limited to a particular region relative to the vehicle.

69.   The method according to claim 51, further comprising:

disabling non-hands-free operation of the mobile device if the positional relationship indicates that the wireless device is located within the vehicle.

70.   The method according to claim 69, wherein said disabling non-hands-free operation is limited to a particular region relative to the vehicle.

71.   The method according to Claim 67, wherein said disabling comprises:

generating an interference signal to disrupt non-hands-free operation of the wireless device.

72.   The method according to Claim 69, wherein said disabling comprises:

generating an interference signal to disrupt non-hands-free operation of the wireless device.

73.　　The medium according to Claim 65, wherein said disabling comprises:

generating an interference signal to disrupt non-hands-free operation of the mobile device.

74.　　The system according to Claim 56, further comprising:

means for disabling non-hands-free operation of the mobile device if the positional relationship indicates that the wireless device is located within the vehicle.

75.　　The system according to Claim 74, wherein said means for disabling comprises:

means for generating an interference signal to disrupt non-hands-free operation of the wireless device.